

CONGRESSIONAL TESTIMONY  
OF  
JONATHAN PHILIPS  
Senior Director  
Cherokee Investment Partners  
TO  
THE SUBCOMMITTEE ON FEDERALISM AND THE CENSUS  
OF THE COMMITTEE ON GOVERNMENT REFORM  
OF THE  
UNITED STATES HOUSE OF REPRESENTATIVES  
REGARDING  
BROWNFIELDS AND THE FIFTY STATES:  
Are State Incentive Programs Capable of  
Solving America's Brownfields Problem?

September 13, 2005

**Statement of Jonathan Philips, Senior Director, Cherokee Investment Partners, LLC**

House Committee on Government Reform, Subcommittee on Federalism and the Census

September 13, 2005

Mr. Chairman, members of the Committee, my name is Jonathan Philips and I am Senior Director of Cherokee Investment Partners, LLC based in Raleigh, North Carolina. I feel honored to be here and want to thank you for the opportunity to testify.

As you know, I testified before this Subcommittee on April 5, 2005 (<http://reform.house.gov/UploadedFiles/J.PhilipsTestimonyFinal3.pdf>) regarding the effectiveness of federal brownfield programs. In today's testimony, I may refer to points from that previous testimony. In the interest of time, however, I will try to keep duplication between the two statements to an absolute minimum.

My testimony today will highlight the following three points:

- 1. Well-designed state brownfield programs are critical to revitalizing the hundreds of thousands of brownfield sites that exist in this country.**
- 2. As critical as these state efforts are, federal assistance is essential if the United States is to see a significant portion of its brownfield sites revitalized.** On this point, I want to emphasize that in other fields, such as historic preservation, it is the synergy between state and federal incentives that has allowed such programs to be so successful.

and

- 3. Federal legislation such as H.R. 4480 from the 108<sup>th</sup> Congress would help provide a dramatic impetus to restore America's brownfield sites to productive use.** On this final point, I want to emphasize the important role that H.R. 4480's transferable tax credit would play in attracting investors to help remediate our nation's brownfields.

Before getting to these three points, I'd like to first give a brief introduction to Cherokee Investment Partners, LLC, or "Cherokee."

**Cherokee Investment Partners, LLC:**

Cherokee is the largest and most active private investment firm in the world specializing in the acquisition, cleanup and revitalization of brownfields. Cherokee is the successor to the investment firm originally founded in 1989 by Chief Executive Officer Thomas F. Darden and Managing Director John A. Mazzarino. Headquartered in Raleigh, North Carolina, Cherokee also has principal offices in Denver and London.

Since inception, we have acquired well over 330 sites across North America and Europe, with an aggregate transaction value of approximately \$1.5 billion. We have purchased a wide range of properties including brick companies, agricultural and pharmaceutical manufacturing facilities, lead-based paint facilities, steel manufacturing and processing plants, textile mills, state and federal Superfund sites, landfills and neighborhoods with widespread blight; and remediated an even wider range of environmental impairments. These investments have also allowed us to pursue and support other, not-for-profit ventures, such as the Oak Ranch children's home, a safe home for needy children in North Carolina. We also pursue a host of international community development efforts, including helping to build a higher education complex in Nigeria and raising money for a micro-enterprise loan program and other projects in Ethiopia, an elementary school in India and health care assistance programs in Africa and Latin America.

Through Cherokee's real estate purchases, remediation, and redevelopment, property sellers and communities alike have seen first-hand the benefits of environmental restoration and community revitalization. Included in those benefits are not only safer, less polluted environments, but also a vast reduction in the amount of urban sprawl.

Cherokee deploys more capital toward environmental cleanup than all but a few entities, public or private, in the country. Further, we are not aware of any private organization in the world that voluntarily cleans up more pollution than Cherokee. Importantly, to date:

- Following remediation, none of our redeveloped sites has ever generated any legal or regulatory conflict;
- None of our indemnified sellers has ever paid fines, penalties, or costs stemming from environmental issues at our sites; and

None of our indemnified sellers has ever paid any environmental cost over-run for either known or unknown contamination at our sites -- Cherokee has always fully paid any over-run costs.

**1. Well-designed State Brownfield Programs are Critical to Helping Revitalize the Hundreds of Thousands of Brownfield Sites that Exist in this Country.**

***Importance of Public-Private Partnerships:***

In the past 15 years, Cherokee has had the opportunity to work with many of the significant state brownfield programs in the country. These state programs create critical opportunities for public-private partnerships to reclaim contaminated lands and to put impaired sites back into productive use.

As the nation's largest and most experienced brownfield investor, we believe that without public-private partnerships, there can be little hope of reclaiming most of the sites that languish today.

Only those sites that are trivially contaminated and/or situated in the most attractive real estate locations are likely to receive the attention of developers willing to clean them up for re-use. Unfortunately, the vast majority of domestic brownfield sites are more complicated or less economically attractive, and are therefore unlikely to be addressed under current market forces and under current regulatory programs.

It is for this basic reason that an aggressive mix of federal, state, and local initiatives is essential if we are to create the public-private partnerships necessary to tackle this national problem in a meaningful way.

### ***Selected State Programs:***

Before highlighting a few of the innovative state programs with which Cherokee has become familiar over the years, it is worth noting a number of excellent summaries of state brownfield programs that are available.

For members of Congress, staff, and the general public who are interested in learning more about the various state and local programs that exist in this nation, I am attaching to this testimony an appendix including six excellent surveys and reports that have been prepared in recent years by the American Bar Association, National Conference of State Legislatures, the Northeast-Midwest Institute, and the U.S. EPA. While I have incorporated some of the information in these reports into this testimony, it is safe to say that, together, these reports cover the breadth of state and local programs in far greater detail than I can today.

### ***Types of Programs:***

State brownfield programs typically include one or more of the following types of initiatives in an effort to drive remediation and redevelopment of brownfield sites:

#### **➤ Information/Assessments**

Most states maintain lists of priority brownfield sites, and many include grant programs (both state and federally funded) to assist with characterization of existing pollution and/or assistance in planning potential end-uses of remediated properties. While these types of initiatives are important and undoubtedly help move some lightly contaminated sites toward productive use, for some more difficult sites, informational-type programs may not make the difference in determining whether the site is remediated and brought back into productive use.

#### **➤ Governmental/Permitting Streamlining**

Many states have adopted “one-stop shopping” or other streamlined permitting processes to expedite and otherwise encourage redevelopment of brownfield sites.

One of the more innovative examples of this type of program is the recent “One-Stop-Shop” Memorandum of Agreement signed by the Pennsylvania Department of Environmental

Protection (“PADEP”) and the U.S. EPA. That MOA is designed to clarify how sites cleaned up under Pennsylvania’s land recycling program can comply with cleanup requirements under federal statutes (RCRA, CERCLA and TSCA). The PADEP/EPA MOA is the first in the nation that systematizes coordination of state and federal brownfield cleanup standards in this manner.

As I mentioned in my oral testimony from last April, governmental streamlining programs can make a real difference in the rate at which brownfield sites are remediated. At that time I gave an example from Cherokee’s experience of two sites in two states on the same day. One site was remediated, rezoned and ready for reuse because the state government was able to respond quickly and efficiently; the other site, with no greater severity of contamination, sat idle because the state government’s regulatory agencies were not able to respond quickly and efficiently. While this is just one example from one company’s experience, this pattern certainly has been repeated numerous times across this country.

➤ **Liability Protections and Voluntary Cleanup Programs.**

Many states have incorporated some form of liability protection for developers of brownfield sites. Typically, these liability protections are incorporated into a larger voluntary cleanup program that includes provisions for public involvement, negotiated remediation plans, and certifications that the cleanup is complete. Due to the overlay of federal environmental laws, these types of liability protections are inherently limited in their scope and applicability.

Still, states do have considerable latitude to determine the applicable cleanup standards for a particular site based on the type of expected reuse. In such circumstances, many states will couple voluntary cleanup programs with “no further action” letters that provide developers with some certainty concerning future liability. (*See, for example, the Colorado Voluntary Cleanup and Redevelopment Act; Colo. Rev. Stat., §§25-16-301 et seq.; see also 2004 Md. Laws, Chap. 73*).

One of the most innovative state programs incorporating these elements is the Brownfield Cleanup Program (BCP) administered by the State of New York. The BCP program provides a structure under which an entity that is not responsible for the on-site contamination may develop a cleanup plan in partnership with the State of New York. If that plan is carried out and certified as complete, then the entity and its successors receive limitations on liability stemming from the contamination. Critically, under the BCP program the entity is also eligible for tax credits to offset the cost of site preparation, on-site groundwater remediation efforts and environmental insurance premiums.

Another leading program in the country in this regard is the New Jersey brownfield program, which not only includes protections against further cleanup requirements, but also provides qualified developers with protection against natural resource damage claims.

By helping to manage risk (and in some instances by also providing financial offsets for voluntary cleanup actions), these types of state programs inherently improve the economics of more difficult brownfield transactions.

➤ **State Revolving Loan Funds/Loan Guarantee Programs**

A number of states have implemented revolving loan programs that provide low-interest loans to developers seeking to remediate and redevelop contaminated properties.

Many of these state programs tier off of the federal State Revolving Loan Funds established through section 601 of the federal Clean Water Act. (*See, e.g., the Pennsylvania Land Recycling Program, which provides low-interest loans to cover up to 75% of the cost of assessments and remediation*).

Other state programs have tiered off of the EPA's Brownfield Cleanup Revolving Loan Fund Pilot Program that provides states with funds for brownfield assessments, training of residents of communities affected by brownfields, and funds for cleanup of brownfields. (*See e.g. the Colorado Brownfields Cleanup Revolving Loan Fund – though this fund is currently restricted to sites in the Denver metropolitan area*).

These programs, by directly providing low-cost capital can make a critical difference between projects that are mothballed and projects that are remediated and revitalized.

➤ **Environmental Insurance Programs**

Rather than, or in addition to, lending capital, many states have turned to loan guarantees and other assurances in an effort to attract investors and lenders to transactions that would normally be considered too risky. (*See, e.g., Massachusetts' Brownfields Redevelopment Access to Capital program which backs loans with state-subsidized, volume-discounted environmental insurance*).

I have included in the bibliography at the end of this testimony an article summarizing the numerous different state brownfield insurance programs in existence today.

➤ **Tax Increment Financing**

While tax increment financing (TIF) is, in some sense, a local financial incentive that can be used to promote redevelopment of brownfield sites, given its state underpinnings, widespread usage, and critical importance to the brownfield market, I would be remiss if I did not mention it here.

At least 48 states have now enacted some form of tax increment financing legislation that permits municipalities or county governments to assist with the financing of redevelopment infrastructure projects by capturing future increases in tax revenues that are expected to flow as a result of the redevelopment project. One of the most recent states to adopt this type of financing mechanism is Cherokee's home state of North Carolina. However, only a small handful of these TIF programs make remediation expenditures eligible for funding. While TIF financing is authorized as a matter of state law, the decision of whether to utilize tax increment financing is typically left up to the local municipality or county government.

And while the details of these state programs vary (for example, some states prohibit TIFs for residential developments, some permit the application of tax increment financing to sales tax revenues, *etc.*), these types of programs can serve as a powerful driver for brownfield remediation and revitalization.

➤ **Special Assessment Districts**

Like TIF programs, special assessment districts are somewhat hard to categorize as either state programs or local programs. Like TIF programs nationwide, assessment districts have been created at the state level and are one more tool that may be used by local governments. Because we may see this tool used increasingly across the country, I have chosen to include a brief illustration of the tool in this testimony today.

The California example is instructive. In 1978, Californians approved Proposition 13, a ballot initiative that limited the ability of local governments to finance local projects. In 1982, State Senator Henry Mello and State Assemblyman Mike Roos secured passage of the Community Facilities District Act (CFD). This act authorized local governments and developers to create CFD's for the purpose of selling tax-exempt bonds to fund public improvements. Property owners that participate in the CFD's pay a "special tax" to repay the bonds. The services and facilities that Mello-Roos Districts can provide include streets, police protection, fire protection, ambulatory, elementary schools, parks, libraries, museums, and cultural facilities. Subsequent amendments to the Mello-Roos Community Facilities District Act explicitly allow CFD's to levy special taxes and issue bonds to provide funds for site cleanups.

While the Mello-Roos Community Facilities District Act applies only to California, other governmental entities at varying levels have begun to follow the California lead. We expect that, if proven successful at driving remediation and redevelopment projects, we may see similar legislation passed by other states.

➤ **General Obligation Bonds**

Many states have turned to the use of general obligation bonds as a way of helping to finance brownfield redevelopment projects.

As I'm sure Chairman Turner is aware, one of the significant examples in this arena is the State of Ohio. In November of 2000, Ohio voters approved \$400 million in general obligation bonds to create the Clean Ohio Fund. This ballot measure sets aside \$200 million for the protection of green space in Ohio and another \$200 million to be targeted toward brownfields projects. The brownfield funds are competitively awarded and can be applied to all stage of redevelopment including site assessment, site acquisition, remediation, demolition, upgrade of infrastructure, and development.

General obligation bonds are a tool that can go a long way toward helping close the cost and risk gap between brownfield development and greenfield development.

➤ **Petroleum Underground Storage Tank Cleanup Funds**

At least 48 states have established special funds dedicated to the cleanup of underground storage tanks. (See *e.g. the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund established by the State of New Jersey*). Often, these state UST programs are created by the assessment of a small tax increase on the sale of petroleum products. In many states, the sheer volume of program participants rapidly depleted available funding and outpaced the incremental petroleum tax assessments. As a result, many states still have petroleum underground storage tank cleanup programs on their books though those funds may be practically insolvent.

Many states have transitioned away from continuing to subsidize these types of cleanup funds and moved instead into insurance-type mechanisms designed to help businesses limit their costs for related contamination. (See *e.g. the Florida Petroleum Liability Restoration and Insurance Program (PLRIP)*).

➤ **Additional Financing Mechanisms**

While I have mentioned a handful of the significant types of state brownfield incentive programs being used nationwide, it is worth noting that literally dozens of other innovative financing mechanisms are being tested at the state level nationwide.

For example, some states have used job creation tax credits to spur redevelopment at brownfield sites, while in Maryland, the State Brownfield Revitalization Incentives Program provides a mechanism under which local governments can provide a tax credit of up to 50% of the property tax attributable to the increased value of the site following cleanup and redevelopment.

Rather than attempt to catalogue each of these various financing mechanisms, it's probably sufficient to note that these different efforts serve as a real source of innovation in this field and, on a state-by-state basis, can serve as powerful and locally meaningful drivers for brownfield remediation and redevelopment.

Given all of these tools at the state level, one might mistakenly think that we have the brownfield problem solved.

This brings us to the second main point that I would like to make here today:

**2. As Critical As These State Efforts Are, Federal Assistance Is Essential If We Are To See A Significant Portion Of America's Brownfield Sites Revitalized In Our Lifetime.**

In my April testimony, I provided a detailed analysis of the economics that drive brownfield transactions and surveyed some of the barriers that exist that are preventing the remediation and redevelopment of the vast majority of this nation's brownfields.

As set forth in greater detail in that testimony, it is our basic assessment that the environmentally-contaminated sites most plaguing to this country are more often than not either

those which would produce net losses for the investors, or those with a risk-reward ratio that is significantly unattractive relative to commonplace, sprawl-producing greenfield development. In either case, the problem stems from rational economic decisions based upon local market forces of supply and demand.

If we are to concede that a wholesale, publicly-funded cleanup of every contaminated site in the nation is not resource-feasible or easily implemented, we must create better ways to combine public and private resources to effectuate more cleanups more quickly.

The problem of brownfields can be greatly alleviated by creating a rational economic framework in which the private sector may operate, respond and be guided by well-considered, typically local, public decisions for prioritization of private-sector driven site cleanup.

In an unsubsidized setting, market economics drive the cleanup decisions of these challenging sites. With public guidance, private forces can operate efficiently to produce revitalization in places where communities most need it, but where without such public incentive, revitalization may not occur.

If one recognizes that public-private partnerships represent one of the only realistic hopes this country has to solve its brownfield problem, and if one recognizes the importance of the various state programs already in effect, the question then becomes: "Is the federal government a necessary partner on the public side of the equation?"

The answer to this question must be "yes."

As this Committee rightly notes in the invitation to this hearing, there are between 450,000 and one million abandoned or underutilized brownfield sites in this country and yet only 16,000 sites (less than 4%) have been redeveloped or are currently in the process of redevelopment through state voluntary cleanup programs.

Last April, I encouraged this Committee to think about sites as being "under water" or "above water." A site that is under water is a site that the marketplace will not redevelop on its own given the cost of cleanup, the value of the property in a clean state, and various other factors (*e.g.*, risk, difficulty/cost of securing capital, cost of development, likely rate of return). A site that is above water is a site where the economics of redevelopment indicate that the site is likely to be cleaned up and revitalized by the private sector without government assistance.

Along this continuum there are some sites that are barely below water. These are sites that may be redeveloped during a favorable economic upturn or with a slight nudge from a state or local incentive program.

Unfortunately, most of the sites we think of as brownfields are further underwater – many considerably so. Without significant public assistance, these sites are unlikely to be remediated anytime soon by the private sector.

Which raises a critical point. These terms – under water and above water – take into account only what I’ll call for lack of a better term, “internal” costs of a developer. On the benefits side, they do not reflect the various public benefits that development would bring, such as reduced risk from pollution, more jobs, a more pristine environment, or even increased property tax revenues. One mission of government, then, must be to focus particularly on those properties that are under water when looking at the internal costs, and above water when the externalities are considered. In this band of sites, government must do what it can to see that the external benefits are realized and that, if possible, the recipients of those benefits (*e.g.*, the municipality that would get increased property tax or sales tax revenue) help defray some of the costs (*e.g.*, through a TIF that will be paid off through those increased revenues). With less than 4% of the nation’s brownfields having been cleaned up in the decade since EPA coined the term, “brownfield” and increased its focus in spurring brownfield development, it is clear that more needs to be done. And that increase needs to come not just at the state and local level, but federally as well.

Cherokee’s experience in the brownfield market demonstrates that this is undoubtedly true. As I mentioned in my April testimony, because of the portfolio effect that comes with acquiring numerous sites each year, I believe Cherokee’s broad diversification allows it to better manage the inherent risks associated with brownfield redevelopment. As a result, in some instances Cherokee may be more willing to acquire a particular contaminated site than would individuals or entities that do not carry diversified or large portfolios.

Yet even with all of the state programs and even with the benefits that we have in this market place, the vast, vast majority of sites that we review each year are still so far under water that we cannot presently afford to invest in their remediation and redevelopment.

In recent years, Cherokee conducted an internal assessment to determine the number of sites that we had reviewed the two years prior and the number of sites that we had ultimately acquired. What we found was that we had reviewed over 450 sites for investment and that in the intervening two years, we had been able to invest in only 10. Critically, we had also reviewed publicly available information to determine whether others had invested in the sites that we had been forced to pass by. What we found was that other entities had invested in another 10 the original 450 sites.

Consider these numbers for a moment. We reviewed 450 sites. In the next two years, we were able to invest in only 10 of the sites and other entities opted to invest in only an additional 10 sites. That leaves 430 sites that were unable to attract investment because, from an “internal cost” perspective, they were too far underwater. And this is despite the state and federal brownfield programs that currently exist.

Given this, I think it is safe to assume that there are many hundreds of thousands of brownfield sites in America that will not be revitalized in our lifetimes even with the existing federal, state, and local programs working in tandem with the private sector to bring them back into productive use.

Clearly we must do more if we are to redevelop the hundreds of thousands of brownfield sites that blight our communities. Without additional federal involvement, these contaminated sites

will continue to cause health and environmental problems, discourage economic development and encourage sprawl into the countryside.

An analysis prepared by the U.S. EPA and George Washington University in September of 2001 concluded that, “unfortunately, the cost of restoring brownfields to economic viability may be beyond the capability of many state and local governments. Though remediation costs are always site-specific, total remediation costs for all of the brownfields located within the United States have been estimated to exceed \$650 billion.” U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response and The George Washington University, *Public Policies and Private Decisions Affecting the Redevelopment of Brownfields: An Analysis of Critical Factors, Relative Weights and Areal Differentials* (Sept. 2001).

Clearly, this is a challenge that is beyond the capacity of state and local governments. If we are to be successful, the federal government simply must be an active and significant partner in this effort to attract private investment to solve this problem in our lifetime.

*The Historic Preservation Model:*

Before turning specifically to H.R. 4480, I’d like to take a brief moment to comment on the tremendous success of historic preservation efforts in this country and to suggest that it could help inform our current discussion if we look to the underpinnings of that success.

In 1976, Congress created the Historic Preservation Tax Credit a tax credit equal to 20% of the amount spent by a taxpayer in a certified rehabilitation of a certified historic structure. According to the National Park Service, since 1976, this tax credit and a related 10% historic rehabilitation tax credit have produced impressive results including:

- Rehabilitation of more than 32,000 historic properties
- Stimulation of more than \$33 billion in private investment
- Rehabilitation of more than 185,000 housing units and creation of 140,000 housing units of which over 75,000 are for low and moderate income families.

National Park Service, *Federal Historic Preservation Tax Incentives: Revitalizing America’s Older Communities Through Private Investment* (2005).

While this federal model, on its own, deserves attention, I believe that one of the reasons that this model has been so successful is because of the synergy and complementary nature of the state historic preservation incentives and this federal tax credit.

If our goal is to encourage private developers to undertake projects that are underwater from a development perspective but that are above water from a public perspective, then it makes sense to me that we would look to create federal brownfield incentives that can complement state brownfield incentives that already exist.

In the field of historic preservation, our nation has seen great results by coupling a uniform federal tax credit with individual state initiatives tailored to meet local needs.

If we wish to enjoy a similar measure of success in the brownfield arena, I believe we should look to the historic preservation model as we examine the interplay between state and federal programs.

Which brings me to my third and final point:

**3. Federal Legislation such as H.R. 4480 from the 108<sup>th</sup> Congress Would Help Provide a Dramatic Impetus to Restore America's Brownfield Sites to Productive Use.**

As I stated last April, Congress has already made some great strides toward being an active partner in helping to solve the brownfield problem. Already, we have adopted important programs such as the seminal Small Business Liability Relief and Brownfield Revitalization Act (H.R. 2869), Section 198 expensing provisions and the critical unrelated business income tax (UBIT) legislation (H.R. 3527) that was sponsored by Representative Nancy Johnson and Senator Baucus and that was enacted into law as section 702 of H.R. 4520, the American Jobs Creation Act (P.L. 108-357). In my April testimony, I provided a thorough rundown on these provisions – especially the newly enacted UBIT legislation.

For the purposes of this testimony, I'd like to focus on H.R. 4480 from the 108<sup>th</sup> Congress – legislation that could provide help dramatically accelerate the rate at which brownfield sites are revitalized in America.

***H.R. 4480 (Chairman Turner)***

H.R. 4480, introduced in the 108<sup>th</sup> Congress by Chairman Turner, seeks to create a transferable tax credit for up to 50 percent of remediation expenditures and utility reconstruction costs at qualified brownfield sites.

Critically, this tax credit would be available prior to the actual expenditure of the remediation costs, thus allowing a pioneering developer to attract more capital with the equity created by the credit.

This point cannot be overstated. By providing up-front equity in the form of a transferable tax credit that can be sold in advance, the Turner legislation creates a powerful incentive for investment funds to deploy capital on brownfield projects for the simple reason that they are able to deploy their investment capital later in the remediation/redevelopment process, thus boosting the rate of return for their investors and thus enabling them to attract new sources of capital to remediate and redevelop additional brownfield sites.

It is worth noting that transferable tax credits have been enormously successful in other contexts and are currently being utilized at a state level for land conservation, historic preservation, and brownfield revitalization to name just a few salient examples. On the federal level, the Historic

Preservation Tax Credit, Low Income Housing Tax Credit, and New Markets Tax Credits have all been used with great success to attract private equity into projects with substantial public benefits.

The program created by the Turner bill, which would be administered by state agencies, would dramatically improve the economics of brownfield transactions and could attract significant volumes of new capital into remediation and redevelopment of brownfields.

The existence of such a credit would allow companies like ours to consider additional investments in property where the remediation costs sufficiently outweigh the potential economic benefits to be derived from the final revitalized site. A significant transferable tax credit could unleash substantial private sector capital for brownfields remediation, attract environmental practitioners and developers to the field, and generate efficiencies within the brownfield submarket that would be beneficial to communities and industry practitioners.

Finally, a tax credit program could prove a tremendous benefit to the Treasury and to thousands of communities across the country. Brownfields revitalization generates jobs and new business development, stimulates additional community investment, and provides an alternative to sprawling development, which has proven to be so costly for so many communities. In addition to the significant savings in transportation, housing and infrastructure costs from smart growth and infill development resulting from brownfield remediation, cities and states will benefit from substantial job creation and added tax revenues.

For example, we estimate that our redevelopment of a 50 acre site in downtown Denver into a mixed-use property with direct access to Denver's light rail system will generate more than 4,000 jobs and an *annual incremental* tax benefit of more than \$1 billion. Nationally, the US Conference of Mayors has estimated that Brownfields redevelopment in 150 cities will yield over 575,000 jobs and between \$790 million and \$1.9 billion in additional tax revenues while preserving approximately 225 acres of undeveloped greenfields. A transferable brownfield tax credit will serve to further unlock the large quantity of environmentally impaired sites around the nation.

In testimony provided to this Committee last April, I provided a case study of how legislation such as H.R. 4480 could drive cleanups nationwide. In that case study, I focused on the Millworks site in Cincinnati as an example of one site where legislation such as H.R. 4480 would have made a tangible on-the-ground difference in driving remediation efforts and so more quickly.

It is beyond doubt that Chairman Turner's legislation would have a dramatic impact in helping to revitalize brownfield sites all across America. Coupled with existing tax provisions such as Section 198 and the newly enacted unrelated business income tax waivers, Representative Turner's legislation will help transform the tax code into a powerful and dynamic driver that will use the strength of private markets to solve one of America's most critical environmental and economic challenges.

Critically, legislation such as that proposed by Chairman Turner is an essential complement to state brownfield programs. Without the assistance that the federal government can provide, state, local and private responses to the brownfield problem will continue to be like fighting a forest fire with a water pistol.

Nearly every member of Congress has the misfortune of brownfields within their own districts. I know many of you here today do, as well. Working together, government and the private sector can address the environmental contamination at these sites and can build healthy communities, with healthy tax and job bases and strong economies.

Working together, federal, state and local governments and the private sector can solve America's brownfield problem.

Cherokee Investment Partners looks forward to continuing working with Chairman Turner, the members of this Subcommittee, and Congress as a whole, to explore new ways to accelerate brownfield cleanups. Please do not hesitate to look to us as a resource both for these legislative endeavors and for assistance with specific sites that you are aware of that are in need of targeted assistance.

Mr. Chairman, members of the Subcommittee, it has been an honor and a privilege to testify here today. I am happy to answer any questions that you may have.

**Contact Information:**

For more information regarding this testimony, or if there is a site or community area in need of our help or attention, please use the following contact information:

Jonathan Philips  
Senior Director  
Cherokee Investment Partners  
702 Oberlin Road, Suite 150  
Raleigh, NC 27605  
(919) 743-2500  
jphilips@cherokeefund.com  
www.cherokeefund.com

## BIOGRAPHY OF JONATHAN PHILIPS

Jonathan Philips is Senior Director of Cherokee Investment Partners, LLC. He specializes in investment, strategic and structuring activities. Through his work identifying, analyzing and executing transactions, Mr. Philips has forged partnerships with communities, organizations, agencies and officials and works closely with members of Congress on revitalization issues facing our nation. In addition to his deal and strategic work, Mr. Philips helped architect the federal 2005 Brownfield Revitalization Act that was enacted by Congress and signed by the President in October 2004. Mr. Philips also created the *US Conference of Mayors—Cherokee Investment Partners Community Revitalization Initiative*, a first-of-its-kind national public-private partnership to fast-track the cleanup and revitalization of property in cities and towns across America. Mr. Philips was honored to previously provide congressional testimony on April 5, 2005 on the topic "*Lands of Lost Opportunity: What Can Be Done to Spur Development at America's Brownfield Sites?*" (<http://reform.house.gov/UploadedFiles/J.PhilipsTestimonyFinal3.pdf>) Prior to joining Cherokee, he served as a senior executive officer and General Counsel of a closely held company headquartered in New York City where he identified, structured and closed private equity investment and strategic relationships. Previously, Mr. Philips practiced as a corporate attorney with Davis Polk & Wardwell in the Merger and Acquisitions and Capital Markets groups, where he represented private equity, banking and corporate clients in over 25 public and private transactions, comprising over a billion dollars of closing value. Before Davis Polk, Mr. Philips founded and led a Manhattan-based consulting company and, previously, worked as a strategic management consultant. Mr. Philips has served as an advisor to corporate and nonprofit entities and is actively involved with several nonprofits throughout the country and is a frequent speaker on brownfields and other topics. He received his law degree from the Yale Law School, where he was an Olin Fellow in Law and Economics, and his Bachelors degree from the University of Virginia, where he was an Echols Scholar with double Highest Distinction. He and his wife, Eva, are parents of three children.

## ACKNOWLEDGEMENTS

This testimony would not have been possible without the help and inspiration of so many wonderful people with whom I work at Cherokee Investment Partners. These people are committed to the ideals for which we stand and I am proud and honored to team with them in the pursuit of community transformation. I would like to offer special thanks and recognition to the following individuals who each provided different, but valuable, contributions to the preparation of my testimony. If this testimony has not induced deep sleep among the audience and readers, it is almost certainly due to the hard work of these individuals: Brittany Burkett, John Gallagher, Michael Hill, Kristin Jacot, Brian Kuehl, Brooke Magee, Rich Ochab, Steve Pearlman and Eric Wisler. These are individuals who paused other undoubtedly important and pressing matters in order to assist with this testimony. I would like to offer a special acknowledgement and tribute to the spirit of Irv Cohen. Irv, whose passing last month the entire brownfield world mourns, was a true pioneer in brownfield redevelopment and a beloved colleague of ours and so many others. Finally, I would like to thank and congratulate Chairman Turner, his wonderful personal staff, the Subcommittee staff, particularly Shannon Weinberg and John Cuaderes, and the other members and staffs of this Subcommittee for shining a national spotlight on solutions that can help unlock tremendous social value for all strata of our nation, so that the ripple of brownfield revitalization can be felt for many generations to come. We are truly grateful for the opportunity to serve you and the entire United States Congress.

**Selected Bibliography:**

Bartsch, Charles and Deane, Rachel, "*Brownfields State of the States: An End-of-Session Review of Initiatives and Program Impacts in the 50 States*," Northeast-Midwest Institute (Dec. 2002).

Bartsch, Charles and Wells, Barbara, "*State Brownfield Financing Tools and Strategies*," Northeast-Midwest Institute (April 2005).

Davis, Todd S., "Brownfields: A Comprehensive Guide to Redeveloping Contaminated Property," American Bar Association (2002).

Morandi, Larry, Smith, Jennifer, and Mullin, Lara, "*Innovations in State Policy: Brownfields Cleanup and Redevelopment*," National Conference of State Legislatures (Oct. 2004).

Runyon, Cheryl L., "Financing Brownfields Cleanup and Redevelopment," National Conference of State Legislatures State Legislative Report, Vol. 28, Number 4 (April 2003).

U.S. EPA, "*State Brownfields and Voluntary Response Programs: An Update from the States*," Publication Number: EPA-560-R-05-001 (Feb. 2005).

Yount, Kristen, and Meyer, Peter, "*Models of Government-Led Brownfield Insurance Programs*," North Kentucky University and the University of Louisville (2002).

## DISCLAIMER

Statements contained herein (including written and oral testimony, visual presentation, those relating to current and future market conditions and trends in respect thereof) that are not historical facts are based on current expectations, estimates, projections, opinions and/or beliefs of Cherokee. Moreover, certain information contained herein constitutes “forward-looking” statements, which can be identified by the use of forward- looking terminology such as “may,” “can,” “will,” “would,” “seek,” “should,” “expect,” “anticipate,” “project,” “estimate,” “intend,” “continue,” “target” or “believe” or the negatives thereof or other variations thereon or comparable terminology. Due to various risks and uncertainties, actual events or results or the actual performance of Cherokee may differ materially from those reflected or contemplated in such forward-looking statements.

Certain information contained herein has been obtained from published sources and/or prepared by other parties, including companies in which investments have been made. While such sources are believed to be reliable, Cherokee assumes no responsibility for the accuracy or completeness of such information.

Past or projected performance is not necessarily indicative of future results and there can be no assurance that projected returns will be achieved or that Cherokee will achieve comparable results.